

Remarks

The Examiner rejected claims 13-17 under 35 USC § 102 as being anticipated by U.S Patent No. 4,685,223 ("Long") and claims 9-10 under 35 USC § 102 as being anticipated by U.S. Patent No. 5,644,856 ("Bray"). The Examiner also rejected claims 1-13 under 35 USC § 103 as being unpatentable over Long or Long in view of either Schwander or Bray. Based on the foregoing amendments and following remarks, Applicant submits the cited art does not disclose, teach, or suggest Applicant's claimed cushion with a thickness between approximately 1/8 and 1 1/2 inches or between approximately 1/8 and 1 inches. Applicant further submits that such numeric limitations are not a matter of discovering the optimum or workable range. For these reasons, the rejections should be withdrawn.

All claims require a cushion with a thickness between approximately 1/8 and 1 1/2 inches or between approximately 1/8 and 1 inches. Because these numeric limitations are not disclosed in Long, Schwander, Matis, or Bray, these claimed thicknesses are not anticipated by any of the references and the rejections under 35 USC § 102 should be withdrawn.

Additionally, the numeric limitations are not a matter of discovering the optimum or workable range but result from significant advancement in the art by improving comfort and cushioning without sacrificing interior volume of the shoe, which would encroach upon the room for the user's foot to move. Hence, merely increasing the cushioning of Long, Schwander, Matis, or Bray would not result in Applicant's claimed shoe but, without further adjustments to the upper, would result in a shoe with a smaller interior volume for the user's foot and would pinch the foot. Moreover, without adjustments to the socklining of Long, Schwander, Matis, or Bray, a cushion with Applicant's claimed dimensions would not fit under the socklining because there is insufficient ma-

terial in the socklining of Long, Schwander, Matis, and Bray to accommodate a larger cushion. In fact, merely increasing the cushion of Long, Schwander, Matis, or Bray without further modifications would render the inventions of Long, Schwander, Matis, or Bray inoperable. Such differences can hardly be argued to be inconsequential.

It is further important to note no cited art was found that discloses Applicant's novel cushion with a thickness between approximately 1/8 and 1 1/2 inches or between approximately 1/8 and 1 inches. Applicant respectfully submits the lack of a reference or invention by one skilled in the art disclosing Applicant's claimed numeric thickness shows the significance and unobviousness of Applicant's cushion and that the claimed thickness is not simply a matter of discovering the optimum or workable range by one skilled in the art.

In view of the foregoing amendments and remarks, Applicant respectfully submits the cushion with a thickness between approximately 1/8 and 1 1/2 inches or between approximately 1/8 and 1 inches is not disclosed, taught, or suggested in the prior art or a matter of discovering the optimum or workable range. Therefore, the rejections under 35 USC § 102 and 35 USC § 103 should be withdrawn.

Respectfully submitted,



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